

Status: Registered

Doc #: CA4741913

RCVD: 2015-10-14 RQST: 2020-06-22 22.36.36

FORM\_C\_V21 (Charge)

NEW WESTMINSTER LAND TITLE OFFICE

LAND TITLE ACT  
FORM C (Section 233) CHARGE

Oct-14-2015 15:39:10.001

CA4741913 CA4741917

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 27 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

**Jennifer Victoria Wong H3E64S**

Digitally signed by Jennifer Victoria Wong H3E64S  
 DN: c=CA, ou=Jennifer Victoria Wong H3E64S, o=Lawyer, ou=Verify ID at www.juricert.com/LKUP.cfm?id=H3E64S  
 Date: 2015.10.14 15:07:14 -0700'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

DENTONS CANADA LLP

Barristers and Solicitors

20th Floor, 250 Howe Street

Vancouver

BC V6C 3R8

Tel: 604-687-4460

File: 564435-1

John G. R. Third

Covenant (Development Agreement)

Document Fees: \$390.50

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

**SEE SCHEDULE**

STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**SEE SCHEDULE**

4. TERMS: Part 2 of this instrument consists of (select one only)

(a)  Filed Standard Charge Terms D.F. No.

(b)  Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

**SEE SCHEDULE**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

**TOWN OF GIBSONS**

BOX 340

GIBSONS

BRITISH COLUMBIA

V0N 1V0

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

JOHN G.R. THIRD

Barrister & Solicitor

DENTONS CANADA LLP

20th Floor, 250 Howe Street

Vancouver, B.C. V6C 3R8

Telephone (604) 687-4460

Execution Date

Y	M	D
15	10	02

Transferor(s) Signature(s)

HYAK MARINE SERVICES LTD. by its authorized signatory(ies):

Print Name: KLAUS FUERNISS

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
JOHN G.R. THIRD  
Barrister & Solicitor  
DENTONS CANADA LLP  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

Y	M	D
15	10	02
15	10	02

\_\_\_\_\_  
KLAUS FUERNISS

\_\_\_\_\_  
JOHN G.R. THIRD  
Barrister & Solicitor  
DENTONS CANADA LLP  
20th Floor, 250 Howe Street  
Vancouver, B.C. V6C 3R8  
Telephone (604) 687-4460

\_\_\_\_\_  
MONIKA FUERNISS

**OFFICER CERTIFICATION:**

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**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
KEYVAN K. MOSEF

Barrister & Solicitor

1590 - 1500 WEST GEORGIA ST.

VANCOUVER, B.C. V6G 2Z8

Phone: 604-687-0023

As to Joshua Jassebi only

Y M D

15 10 05

\_\_\_\_\_  
CIBC MORTGAGES INC. by its  
authorized signatory(ies):

\_\_\_\_\_  
Print Name: JOSHUA JASSEBI

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
KEYVAN K. MOSEF

Barrister & Solicitor

1590 - 1500 WEST GEORGIA ST.

VANCOUVER, B.C. V6G 2Z8

Phone: 604-687-0023

As to Joshua Jassebi only

Y M D

15 10 05

\_\_\_\_\_  
CANADIAN IMPERIAL BANK OF  
COMMERCE by its authorized  
signatory(ies):

\_\_\_\_\_  
Print Name: JOSHUA JASSEBI

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

Officer Signature(s)

**Execution Date**

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
IAN C. POOLE

Y	M	D
15	10	07

TOWN OF GIBSONS by its authorized signatory(ies):

Commissioner for Taking Affidavits in British Columbia

474 South Fletcher Road  
Gibsons, BC V0N 1V0  
Phone: 604-886-2274  
(as to both signatures)

\_\_\_\_\_  
Print Name: WAYNE ROWE, Mayor

\_\_\_\_\_  
Print Name: SELINA WILLIAMS,  
Corporate Officer

\_\_\_\_\_

\_\_\_\_\_

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

FORM\_E\_V21

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND

STC for each PID listed below? YES

[PID]	[LEGAL DESCRIPTION – must fit in a single text line]
011-118-202	LOT 1 EXCEPT THE EAST 157 FEET BLOCK A DISTRICT LOT 685 PLAN 5579
011-118-211	LOT 2 BLOCK A DISTRICT LOT 685 PLAN 5579
007-359-829	LOT 1 BLOCK A DISTRICT LOT 686 PLAN 14197
007-359-870	LOT 2 BLOCK A DISTRICT LOT 686 PLAN 14197
011-117-524	LOT A (SEE 450146L) OF LOT 1 BLOCK A DISTRICT LOT 685 PLAN 5579

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 219, LTA (Entire Instrument)

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Page 19 Granting Covenant with one registration number less than the within instrument priority over Mortgage CA3995724 and Assignment of Rents CA3995725 (as to PID: 011-118-211 Lot 2, Plan 5579)

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Page 20 Granting Covenant with two registration numbers less than the within instrument priority over Mortgage BW231206 and Assignment of Rents BW231207 (as to PID: 007-359-829 Lot 1, Plan 14197) (as to PID: 007-359-870 Lot 2, Plan 14197)

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Page 21 Granting Covenant with three registration numbers less than the within instrument priority over Mortgage CA2177624 (as to PID: 011-117-524 Lot A, Plan 5579)

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Page 22 Granting Covenant with four registration numbers less than the within instrument priority over Mortgage CA3527722 (as to PID: 011-118-202 Lot 1, Plan 5579)

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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Status: Registered

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FORM\_E\_V21

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

**PAGE 8 OF 27 PAGES**

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

5. TRANSFEROR(S):

HYAK MARINE SERVICES LTD. (Inc. No. BC0323021)

KLAUS FUERNISS

MONIKA FUERNISS

CIBC MORTGAGES INC. (Inc. No. A33457) (as to priority)

CANADIAN IMPERIAL BANK OF COMMERCE (as to priority)



**TERMS OF INSTRUMENT – Part 2****Section 219 Covenant  
Development Agreement**

THIS AGREEMENT dated for reference October 1, 2015, is

BETWEEN:

**HYAK MARINE SERVICES LTD., INC. NO. BC0323021**

PO BOX 570

Gibsons, BC

VON 1V0

("Hyak Marine Services")

AND:

**KLAUS FUERNISS**

**MONIKA FUERNISS**

PO Box 570

Gibsons, BC

VON 1V0

(collectively, "**Fuerniss**", which together with Hyak Marine Services are the "**Owner**")

AND:

**TOWN OF GIBSONS**

Box 340

Gibsons, BC

VON 1V0

(the "**Town**")

GIVEN THAT:

- A. Hyak Marine Services is the registered owner in fee simple of certain lands and premises located in the Town of Gibsons, British Columbia, and more particularly described as follows:

Parcel Identifier: 011-118-211

Legal Description: Lot 2 Block A District Lot 685 Plan 5579

Parcel Identifier: 007-359-829

Legal Description: Lot 1 Block A District Lot 686 Plan 14197

Parcel Identifier: 007-359-870

Legal Description: Lot 2 Block A District Lot 686 Plan 14197

Parcel Identifier: 011-118-202

Legal Description: Lot 1, Except the East 157 Feet Block A District Lot 685 Plan 5579

(the "Hyak Lands");

- B. Fuerniss is the registered owner in fee simple of certain lands and premises located in the Town of Gibsons, British Columbia, and more particularly described as follows:

Parcel Identifier: 011-117-524

Legal Description: Lot A (See 450146L) of Lot 1 Block A District Lot 685 Plan 5579

(the "Fuerniss Lands", which together with the Hyak Lands are the "Land");

- C. Fuerniss is licensee under a licence agreement with the Province of British Columbia (the "Province") dated for reference May 31, 2006, under licence number 239837 (the "Water Licence") over the following lands:

Unsurveyed foreshore or land covered by water being part of the bed of Shoal Channel, Group 1, New Westminster District, containing 0.10 hectares, more or less

(the "Water Licence Area");

- D. Hyak Marine Services is the lessee under a lease agreement with the Province, under lease number 238162 (the "Water Lease") over the following lands:

District Lot 7005, Group 1, New Westminster District, Containing 0.280 hectares

(the "Water Lease Area");

- E. The Owner (or its agent) has applied to the Town to amend Town of Gibsons Zoning Bylaw No. 1065, 2007 (the "Zoning Bylaw") to rezone the Land to permit the development of certain commercial and residential uses in accordance with the plans attached as Schedule "A" to this Agreement (the "Development"), by

way of George Hotel & Residences Zoning Amendment Bylaw No. 1065-33, 2015 (the "Zoning Amendment Bylaw");

- F. The Development consists a residential building, hotel building, conference centre, including spa, pools, cafes, lounge, retails uses, restaurant and marina, as generally shown on Schedule "A" and more particularly described in the Zoning Amendment Bylaw. Located on the Land will be a public plaza, labelled as "16,540 sf Plaza Area" on Schedule "A" – Page 2 (the "Plaza"), an underground parkade, located underneath of the Plaza and as shown generally on Schedule "A" – Page 1 (the "Parkade"), a waterfront public walkway, labelled as "Wood boardwalk" on Schedule "A" – Page 3 (the "Waterfront Walkway"), and a pier, as shown generally on Schedule "A" (the "Pier");
- G. The Land is adjacent to a park known as Winegarden Park ("Winegarden Park"), as shown generally on Schedule "A" – Page 1;
- H. The Owner has agreed with the Town to provide, in connection with the Development, certain public amenities as more specifically described in this Agreement; and
- I. The Owner wishes to grant, and the Town accepts, the s.219 covenant contained in this Agreement over the Land.

THIS AGREEMENT is evidence that in consideration of payment of \$1.00 by the Town to the Owner (the receipt of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Owner covenants and agrees with the Town in accordance with s. 219 of the *Land Title Act* as follows:

#### **USE OF LAND**

- 1. The Owner covenants and agrees with the Town that the Land must only be subdivided, built on, and used in strict accordance with this Agreement.

#### **OWNER'S OBLIGATIONS – PRIOR TO SUBDIVISION**

- 2. The Owner covenants and agrees with the Town that the Owner shall not subdivide or consolidate the Land unless the Owner has:
  - (a) entered into a servicing agreement, in a form satisfactory to the Town, with the Town securing:
    - (i) construction by the Owner of the Waterfront Walkway fronting the Land and beyond the Land to both the north and south of the Land, limited in length to accommodate a maximum 5% grade of walkway, including sewer main replacement, stairs and ramp for access from Winegarden Park; and

- (ii) construction by the Owner of the Plaza to the specifications approved by the Town under a permit issued pursuant to Town of Gibsons Traffic and Highway Use Bylaw No. 1193, 2014, and in accordance with the design plans and specifications to be developed based on Development Permit DP-2013-01, drawings dated prepared by Omicron, May 11, 2015;
  - (b) dedicated as road the Plaza, in exchange for the Town closing as road part of Winn Road for consolidation with the Land, in the dimensions and form of agreement satisfactory to the Town;
  - (c) [intentionally deleted]granted to the Town a perpetual statutory right of way, in a form satisfactory to the Town, for public use of the Waterfront Walkway and Pier;
  - (d) granted to the Town a covenant under section 219 of the *Land Title Act*, in a form satisfactory to the Town, providing for maintenance by the Owner of the Plaza, Waterfront Walkway and Pier, to the satisfaction of the Town, including a provision requiring the Owner to cause the section 219 covenant to be assumed by any commercial strata corporation created under *the Strata Property Act* on the Land, and including an indemnity in favour of the Town; and
  - (e) paid to the Town a cash contribution for the upgrade of the Prowse Road Sewage Lift Station, in an amount as determined by the Town, but determined reasonably on the proportional increase in capacity of the Prowse Road Sewage Lift Station needed to accommodate the Development.
3. The Owner and the Town agree and acknowledge that the works described in subsection 2(f) are in lieu of any development cost charge, local area service charge, or latecomer charges as contemplated in s. 939 of the *Local Government Act*, for the upgrade to the Prowse Road Sewage Lift Station only.

#### **OWNER'S OBLIGATIONS – PRIOR TO BUILDING PERMIT**

4. The Owner covenants and agrees with the Town that the Owner shall not build on the Land, nor apply for or be entitled to receive a building permit for the Land unless the Owner has:
- (a) paid to the Town a contribution in the amount of \$100,000.00 for deposit in the Town's Community Amenity Reserve Fund, which contribution may be used at the Town's sole discretion;

- (b) paid to the Town a cash contribution in the amount of \$5,000.00 for deposit in the Town's Winegarden Park Planning Fund;
- (c) provided to the Town three unique concept plans, prepared by a landscape architect, for relocation of the band shell in the Winegarden Park;
- (d) appointed a representative for participation in the Winegarden Park Planning Advisory Body;
- (e) implemented the recommendations of the Traffic Study through incorporation in a development permit issued for the Land under Development Permit Area # 5 – Form and Character;
- (f) provided to the Town a construction management plan, to the satisfaction of the Town;
- (g) entered into a servicing agreement, in a form satisfactory to the Town, with the Town securing upgrades to that part of Gower Point Road fronting the Land to the standards specified in Town of Gibsons Development and Subdivision Servicing and Stormwater Management Bylaw No. 1175, including replacement of the water main located in that part of Gower Point Road to a 250 mm diameter water main and reconstruction of the storm sewer located therein;
- (h) caused the registration of modifications to the Water Licence and/or Water Lease to permit portions of the Development in front of Winegarden Park, as agreed upon between the Owner, the Province, and Council of the Town as applicable. For certainty, the modifications contemplated herein shall be first subject to the approval of the Council of the Town, but the parties to the modified Water Licence and/or Water Lease shall remain the Owner and the Province;
- (i) granted to the Town a flood-proofing covenant under section 219 of the *Land Title Act*, in the Town's standard form, which provides, *inter alia*:
  - (i) for a flood construction level on the Land of an elevation of at least 5.33 metres Geodetic Survey of Canada datum, and
  - (ii) for the Owner to save harmless the Town and its elected officials, officers and employees in connection with the section 219 covenant; and
- (j) granted to the Town a covenant under section 219 of the *Land Title Act*, in a form satisfactory to the Town, which provides that the hotel building to be constructed as part of the Development will be used for only hotel

use, as that term is interpreted, in the opinion of the Town. Without limiting the foregoing, the parties acknowledge that "hotel use" shall include the spa, retail, and commercial uses contemplated by the Zoning Amendment Bylaw.

5. The Owner agrees and acknowledges that the works described in subsection 4(g) are not included in the calculations used to determine the amount of any development cost charge, and are not "excess or extended services" as defined in s. 939 of the *Local Government Act*.

#### **OWNER'S OBLIGATIONS – PRIOR TO OCCUPANCY PERMIT**

6. The Owner covenants and agrees with the Town that the Owner shall not occupy, nor apply for or be entitled to receive an occupancy permit for any building that may be constructed on the Land unless the Owner has:
  - (a) entered into an agreement with the Town, in a form satisfactory to the Town, for "excess and extended services" under section 939 of the *Local Government Act*, for the Waterfront Walkway improvements south of the Land and for sewer replacement improvements contemplated herein, which latecomer agreement will include the following terms:
    - (i) a term of 15 years;
    - (ii) the parcels of land in respect of latecomer charges to be imposed in respect of the excess and extended services are those whose legal parcel identifiers are set out as follows (the "Benefitting Lands"):
      - (1) 011-118-237;
      - (2) 015-828-603;
      - (3) 011-118-253;
      - (4) 011-118-261;
      - (5) 011-118-288;
      - (6) 011-118-296;
      - (7) 011-291-532;
      - (8) 014-883-520; and
    - (iii) the eligible costs and allocation of costs between the Land and the Benefitting Lands shall be determined by Council of the Town as per section 939 of the *Local Government Act*. Without limiting the foregoing, the eligible costs and allocation for:

- (1) the sewer main replacement shall be based on the cost of installation, pro-rated for the fronting length of renewal, and
  - (2) the Waterfront Walkway improvements shall be based on the additional cost of materials delivered and installed on top of the existing grade, for a tapered grade not greater than 5%, leading from the raised new walkway at the Development, down to the existing elevation at the south end of Shoal Bay to the south of the Land;
- (b) completed restoration of Winegarden Park, including returning Winegarden Park to the same condition as existed prior to the commencement of construction of the Development, except where agreed to by the parties, and relocating the band shell located in Winegarden Park in accordance with the results of any planning process for Winegarden Park, all to the satisfaction of the Town;
- (c) constructed a total of twelve (12) parking stalls, comprised of:
- (i) marked parking stalls on Level P1 of the Parkade, which parking stalls shall have signage on the exterior of the Parkade indicating the presence of public and visitor parking for the Development, and / or
  - (ii) new parking stalls on Gibsons Way near School Road;
- (d) completed those works and services contained in the servicing agreement contemplated in subsections 2(a) and 4(g) of this Agreement, to the satisfaction of the Town; and
- (e) acquired ownership of a volumetric parcel located underneath of the Plaza, in exchange for the appraised value of the volumetric parcel, in the dimensions and form of agreement satisfactory to the Town, including granting to the Town any easements for support or other agreements that may reasonably be necessary to secure or articulate the rights of the parties.

## GENERAL TERMS

7. The parties covenant and agree that the Town may require the Owner, once in every five (5) years, commencing on the date an occupancy permit is issued by the Town for the Development, to provide a parking assessment, completed by a qualified professional as determined by the Town, monitoring the effectiveness of any reduced parking provisions for the Land. The Owner covenants and agrees

to implement any recommendations contained in the parking assessment for parking management of the Land.

8. The Owner covenants, acknowledges and agrees with the Town that the issuance by the Town of any development permit for the Land under Development Permit Area – 1, as outlined in the Town's Official Community Plan, shall be conditional on the receipt of and approval by the Town of peer reviews of any reports or plans prepared by the Owner for DPA-1. The parties acknowledge that the requirement herein may be in excess of requirements for DPA-1 under the Town's Official Community Plan.
9. The parties covenant, acknowledge and agree that the Owner's obligations related to construction or replacement of sewer utilities contemplated herein may be subject to the Town first securing rights of access or entry to the property or lands of a third party for construction or replacement of sewer utilities, and that the Town shall secure same at its sole cost and expense.
10. The parties covenant, acknowledge and agree that the Owner, or subsequent owner of the hotel component of the Development, reserves a right for non-exclusive use to the Plaza for owner-undertaken promotional events, and the Town may grant a standing permit to the Owner (or owner of the hotel component of the Development) under the Town of Gibsons Public Places Regulations Bylaw No. 1012, 200 to permit such events, or other arrangement as may be satisfactory to the parties.
11. The Owner covenants, acknowledges and agrees with the Town that the Owner shall be responsible for obtaining all necessary approvals or authorizations from the Province for the Land or for any of agreements referred to herein.
12. The Owner covenants, acknowledges and agrees with the Town that the Town's solicitor may prepare any and all agreements referred to herein, and that the Owner shall pay to the Town the legal fees incurred by the Town in the review, preparation and registration of said agreements, and will deposit with the Town, upon demand, the actual or estimated cost of such legal fees. Without limiting the foregoing, the Owner shall also be responsible for all costs incurred in connection with this Agreement and the agreements contemplated herein, including all survey and preparation of plans costs, and land title office registration fees.
13. Any opinion, decision, act or expression of satisfaction provided for in this Agreement is to be taken or made by any of the following, as applicable:
  - (a) the Town's Director of Planning, or his or her delegate authorized as such in writing,



- (b) the Town's Director of Engineering, or his or her delegate authorized as such in writing, or
- (c) the Approving Officer for the Town, or his or her delegate authorized as such in writing,

in his or her absolute, sole and unfettered discretion.

14. The parties agree that any form of agreement referred to in this Agreement as "in a form satisfactory to the Town", shall be in the form and on the terms satisfactory to the Town in the Town's absolute, sole and unfettered discretion.
15. The Owner releases, and must indemnify and save harmless, the Town, its elected and appointed officials and employees, from and against all liability, actions, causes of action, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Owner, or anyone else, arising from the granting or existence of this Agreement, from the performance by the Owner of this Agreement, or any default of the Owner under or in respect of this Agreement.
16. The parties agree that this Agreement creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
17. Where the Town is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the Town is under no public law duty of fairness or natural justice in that regard and agrees that the Town may do any of those things in the same manner as if it were a private party and not a public body.
18. This Agreement does not
  - (a) affect or limit the obligations, discretion, rights or powers of the Town or its approving officer under any enactment (as defined in the *Interpretation Act*, on the reference date of this Agreement) or at common law, including in relation to the use or subdivision of the Land,
  - (b) affect or limit any enactment relating to the use or subdivision of the Land, or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

19. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under s. 219 of the *Land Title Act* in respect of the Land and this Agreement burdens the Land and runs with it, and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated. The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
20. The Owner agrees to do everything reasonably necessary, at the Owner's expense, to ensure that this Agreement, and all agreements referred to herein, are registered against title to the Land with priority over all financial charges, liens and encumbrances registered, or the registration of which is pending, at the time of application for registration of this Agreement.
21. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
22. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
23. This Agreement is the entire agreement between the parties regarding its subject.
24. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.
25. The Owner must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
26. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

### Consent and Priority Agreement

GIVEN THAT the CANADIAN IMPERIAL BANK OF COMMERCE (the "**Chargeholder**") is the holder of a mortgage and assignment of rents registered against Parcel Identifier: 011-118-211, Lot 2 Block A District Lot 685 Plan 5579 (the "**Lot 2 Plan 5579**"), which charges are registered in the Vancouver Land Title Office under instrument numbers CA3995724 and CA3995725 respectively (the "**Charge**").

This Consent and Priority Agreement is evidence that in consideration of payment to it of \$1.00 by the Transferee described in item 6 of Part 1 of the Form C to which this Agreement is attached (the "**Transferee**"), the Chargeholder agrees with the Transferee as follows:

- (1) The Chargeholder consents to the granting and registration of the s. 219 covenant to which this Agreement is attached (the "**Covenant**") and the Chargeholder agrees that the Covenant binds its interest in and to Lot 2 Plan 5579.
- (2) The Chargeholder grants to the Transferee priority for the Covenant over the Chargeholder's right, title and interest in and to Lot 2 Plan 5579 and the Chargeholder postpones the Charge, and all of its right, title and interest thereunder, to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

As evidence of its agreement with the Transferee to be bound by this Consent and Priority Agreement, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C or D, as applicable, to which this Agreement is attached and which forms part of this Agreement.

### Consent and Priority Agreement

GIVEN THAT the CANADIAN IMPERIAL BANK OF COMMERCE (the "**Chargeholder**") is the holder of a mortgage and assignment of rents registered against the following properties:

PID: 007-359-829, Lot 1 Block A District Lot 686 Plan 14197, and

PID: 007-359-870, Lot 2 Block A District Lot 686 Plan 14197

(the "**Lots 1 and 2 Plan 14197**"),

which charges are registered in the Vancouver Land Title Office under instrument numbers BW231206 and BW231207 respectively (the "**Charge**").

This Consent and Priority Agreement is evidence that in consideration of payment to it of \$1.00 by the Transferee described in item 6 of Part 1 of the Form C to which this Agreement is attached (the "**Transferee**"), the Chargeholder agrees with the Transferee as follows:

- (1) The Chargeholder consents to the granting and registration of the s. 219 covenant to which this Agreement is attached (the "**Covenant**") and the Chargeholder agrees that the Covenant binds its interest in and to Lots 1 and 2 Plan 14197.
- (2) The Chargeholder grants to the Transferee priority for the Covenant over the Chargeholder's right, title and interest in and to Lots 1 and 2 Plan 14197 and the Chargeholder postpones the Charge, and all of its right, title and interest thereunder, to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

As evidence of its agreement with the Transferee to be bound by this Consent and Priority Agreement, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C or D, as applicable, to which this Agreement is attached and which forms part of this Agreement

### Consent and Priority Agreement

GIVEN THAT the CIBC MORTGAGES INC., INC. NO. A33457 (the "**Chargeholder**") is the holder of a mortgage registered against Parcel Identifier: 011-117-524, Lot A (See 450146L) of Lot 1 Block A District Lot 685 Plan 5579 (the "**Lot A Plan 5579**"), which charge is registered in the Vancouver Land Title Office under instrument numbers CA2177624 (the "**Charge**").

This Consent and Priority Agreement is evidence that in consideration of payment to it of \$1.00 by the Transferee described in item 6 of Part 1 of the Form C to which this Agreement is attached (the "**Transferee**"), the Chargeholder agrees with the Transferee as follows:

- (1) The Chargeholder consents to the granting and registration of the s. 219 covenant to which this Agreement is attached (the "**Covenant**") and the Chargeholder agrees that the Covenant binds its interest in and to Lot A Plan 5579.
- (2) The Chargeholder grants to the Transferee priority for the Covenant over the Chargeholder's right, title and interest in and to Lot A Plan 5579 and the Chargeholder postpones the Charge, and all of its right, title and interest thereunder, to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

As evidence of its agreement with the Transferee to be bound by this Consent and Priority Agreement, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C or D, as applicable, to which this Agreement is attached and which forms part of this Agreement.

### Consent and Priority Agreement

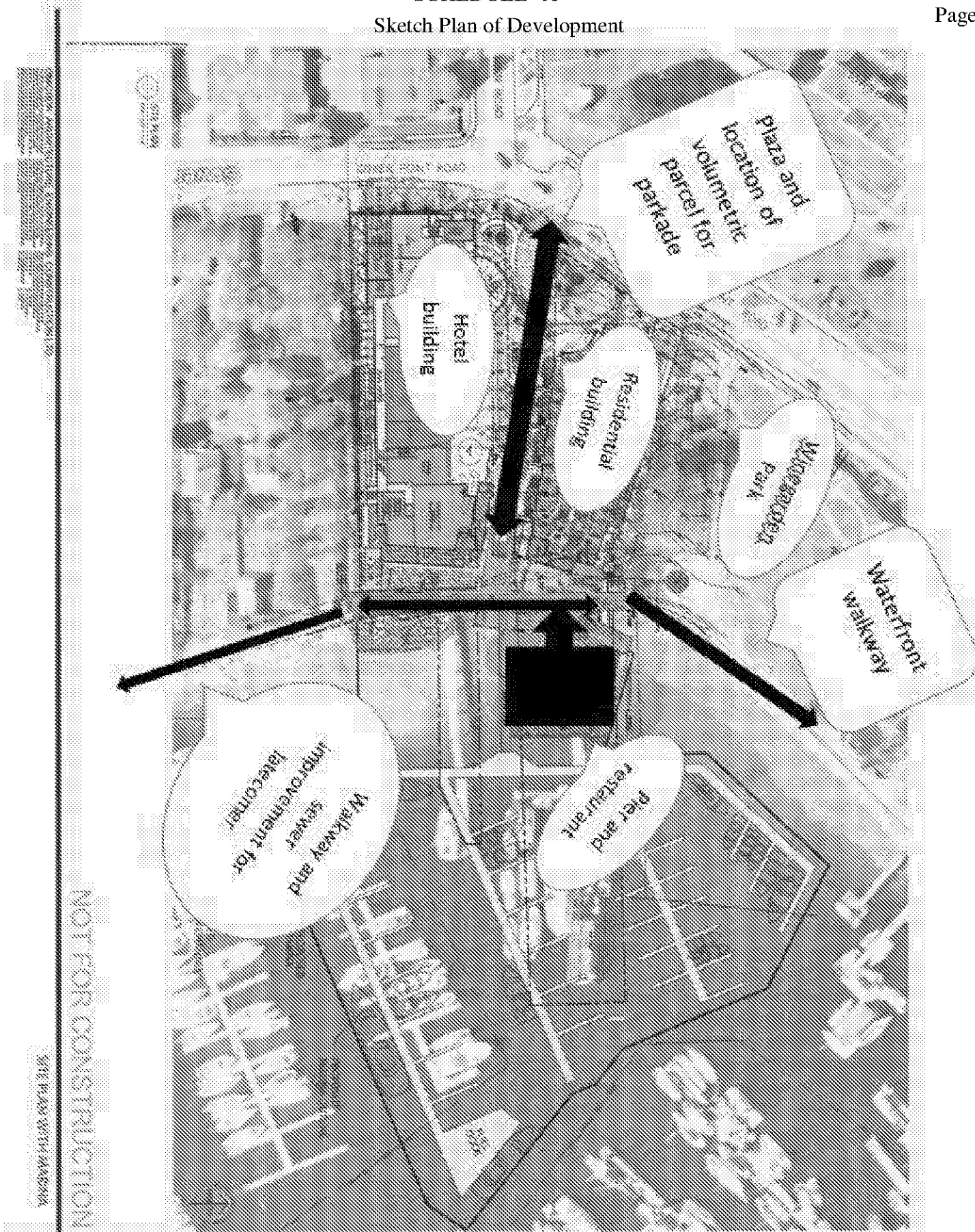
GIVEN THAT the CIBC MORTGAGES INC., INC. NO. A33457 (the "**Chargeholder**") is the holder of a mortgage registered against Parcel Identifier: 011-118-202, Lot 1, Except the East 157 Feet Block A District Lot 685 Plan 5579 (the "**Lot 1 Plan 5579**"), which charge is registered in the Vancouver Land Title Office under instrument numbers CA3527722(the "**Charge**").

This Consent and Priority Agreement is evidence that in consideration of payment to it of \$1.00 by the Transferee described in item 6 of Part 1 of the Form C to which this Agreement is attached (the "**Transferee**"), the Chargeholder agrees with the Transferee as follows:

- (1) The Chargeholder consents to the granting and registration of the s. 219 covenant to which this Agreement is attached (the "**Covenant**") and the Chargeholder agrees that the Covenant binds its interest in and to Lot 1 Plan 5579.
- (2) The Chargeholder grants to the Transferee priority for the Covenant over the Chargeholder's right, title and interest in and to Lot 1 Plan 5579 and the Chargeholder postpones the Charge, and all of its right, title and interest thereunder, to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

As evidence of its agreement with the Transferee to be bound by this Consent and Priority Agreement, as a contract and as a deed executed and delivered under seal, the Chargeholder has executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C or D, as applicable, to which this Agreement is attached and which forms part of this Agreement.

# SCHEDULE "A" Sketch Plan of Development

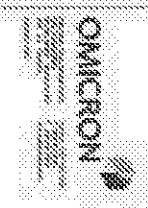


NOT FOR CONSTRUCTION

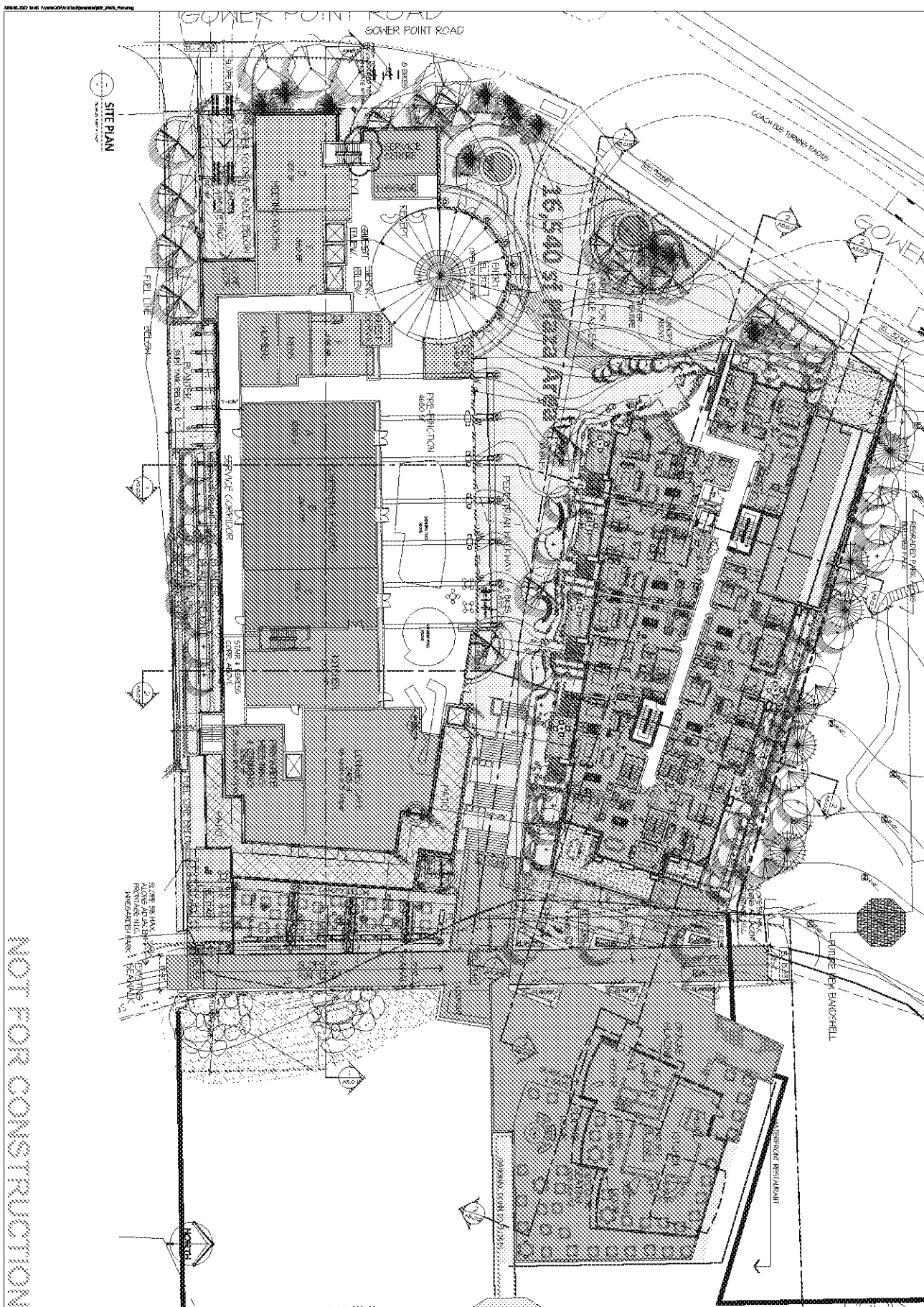
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KLALIS FUERNISS  
ENTERPRISES INC.  
THE GEORGE  
HOTEL & RESIDENCES

Issued to COWI



OMICRON ARCHITECTURE ENGINEERING CONSTRUCTION LTD.



NOT FOR CONSTRUCTION

SITE PLAN

A.1.0.1

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KLAUS FUERNISS ENTERPRISES INC.  
THE GEORGE HOTEL & RESIDENCES

Issued for Client Review

